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Attorneys for Defendant Insurance
Corporation of New York

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FAIRMONT SPECIALTY INSURANCE)	No. CV
COMPANY, a Delaware corp-)	
oration, and TIG INSURANCE)	
COMPANY, a California corp-)	
oration,)	NOTICE OF REMOVAL OF ACTION
)	UNDER 28 U.S.C. § 1441
Plaintiffs,)	(DIVERSITY)
)	
vs.)	
)	
INSURANCE CORPORATION OF NEW)	
YORK, a New York corporation,)	
DEPENDABLE SHEET METAL, a)	
California corporation, and)	
DOES 1 through 10,)	
)	
Defendants.)	

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PLEASE TAKE NOTICE that defendant Insurance

1 Corporation of New York ("INSCORP"), a New York corporation,
2 through its attorneys, pursuant to 28 U.S.C. §1441, hereby
3 removes the above-captioned civil action from the Superior Court
4 of the State of California for the County of Contra Costa to the
5 United States District Court for the Northern District of
6 California. Removal is proper on the following grounds:

7 1. Plaintiffs Fairmont Specialty Insurance Company
8 ("Fairmont") and TIG Insurance Company ("TIG") (collectively,
9 "Plaintiffs") filed their Complaint against INSCORP and
10 Dependable Sheet Metal ("Dependable") on May 29, 2007.

11 INSCORP's Agent for Service of Process in California was served
12 with the Summons and Complaint on June 4, 2007. True and
13 correct copies of all process, pleadings, and orders that have
14 been served upon INSCORP to date in the action are attached as
15 Exhibit 1 hereto.

16 Jurisdiction

17 2. The United States District Court for the Northern
18 District of California has original jurisdiction over this
19 action under the diversity statute. 28 U.S.C. § 1332(a).
20 Diversity jurisdiction exists because, when the parties are
21 properly aligned and/or the fraudulent joinder of Dependable as
22 a defendant is disregarded, there is complete diversity of
23 citizenship between all plaintiffs and defendant INSCORP and the
24 amount in controversy exceeds \$75,000.

25 (a) Plaintiff Fairmont is a Delaware corporation with
26 its principal place of business in the State of Texas. Thus,
27 for purposes of diversity jurisdiction, Fairmont is a citizen of
28 both Delaware and Texas.

1 (b) Plaintiff TIG is a California corporation, with
2 its principal place of business in the State of New Hampshire.
3 Thus, for purposes of diversity jurisdiction, TIG is a citizen
4 of both California and New Hampshire.

5 (c) Defendant INSCORP is a New York corporation with
6 its principal place of business in the State of Connecticut.
7 Thus, for purposes of diversity jurisdiction, INSCORP is a
8 citizen of both New York and Connecticut.

9 (d) As set forth more fully below, although defendant
10 Dependable is a California corporation with its principal place
11 of business in California, it is not a proper party to this
12 action and, even if it were, it is not properly aligned as a
13 defendant in this action. Accordingly, the California
14 citizenship of Dependable does not result in a lack of complete
15 diversity of citizenship between all plaintiffs and INSCORP, the
16 only proper defendant.

17 (e) Under 28 U.S.C. §1441, "the citizenship of
18 defendants sued under fictitious names shall be disregarded," so
19 the citizenship of defendants "Does 1 through 10" is immaterial.
20 Consequently, there exists complete diversity of citizenship
21 between the parties.

22 (f) The amount in controversy exceeds \$75,000. The
23 Complaint seeks declaratory relief and damages exclusive of
24 interest and costs in an unspecified amount. Plaintiffs seek
25 contribution from INSCORP for the cost of defending and
26 indemnifying Dependable in at least 12 construction defect
27 lawsuits pending in various courts in California (Complaint,
28 ¶ 6). A closer look at only four of those cases makes clear

1 that the amount in controversy requirement for removal exists:

2 (i) In *Gary Kaiser v. KB Homes*, Case No. C 05-
3 00991 (Contra Costa County Superior Court) (Complaint, ¶ 6a),
4 Plaintiffs have demanded that INSCORP fund 70.344 percent of a
5 \$50,000 settlement, i.e., \$35,172;

6 (ii) In *Tannaz Abzarian v. Richland Development*
7 *Corp.*, Case No. C 05-00147 (Contra Costa County Superior
8 Court) (Complaint, ¶ 6b), Plaintiffs have demanded that INSCORP
9 fund 76 percent of a \$48,000 settlement, i.e., \$36,480;

10 (iii) In *Lorna Belsky v. The Presley Companies*,
11 Case No. C 05-00837 (Contra Costa County Superior
12 Court) (Complaint, ¶ 6c), Plaintiffs have funded only \$25,000 of
13 a \$40,000 settlement, leaving the \$15,000 balance to be funded
14 by INSCORP; and

15 (iv) In *Charles Edwards v. Suncrest Homes*, Case
16 No. C 05-00387 (Contra Costa County Superior Court) (Complaint,
17 ¶ 6f), there is an agreed \$20,000 settlement, which Plaintiffs
18 have demanded be funded entirely by INSCORP.

19 These four cases alone represent claims by Plaintiffs
20 against INSCORP totalling \$106,652, and that is only the
21 indemnity portion of the cases; claims for sharing the costs of
22 defense are not included. Accordingly, it is clear that
23 Plaintiffs' claims against INSCORP exceed the requisite
24 jurisdictional amount.

25 Intradistrict Assignment

26 3. Section 1441(a) of Title 28 of the United States
27 Code provides in pertinent part: "[A]ny civil action brought in
28 a State court of which the district courts of the United States

1 have original jurisdiction, may be removed by the defendant . .
2 . to the district court of the United States for the district
3 and division embracing the place where such action is pending."
4 28 U.S.C. § 1446(b). The removed action was pending in the
5 Superior Court of Contra Costa County and the underlying
6 construction defect cases are pending primarily in Contra Costa
7 and Alameda counties. Accordingly, pursuant to Civil L.R. 3--
8 2(c), the removed civil action arises in those two counties
9 within the Northern District of California.

10 Dependable's Citizenship Should Be

11 Disregarded in Assessing Jurisdiction.

12 4. There are two separate grounds for disregarding
13 the citizenship of Dependable in assessing whether complete
14 diversity of citizenship exists, both of which are apparent from
15 the face of the Complaint:

16 (a) The joinder of Dependable as a defendant in
17 this action is manifestly fraudulent in that the Complaint does
18 not seek any relief against Dependable, and is therefore a
19 "sham." See, e.g., *Dacosta v. Novartis AG*, 180 F. Supp. 2d
20 1178, 1181 (D. Or. 2001). Not only does the Complaint fail to
21 state a cause of action against Dependable, it does not even
22 purport to do so. E.g., *Plute v. Roadway Package System, Inc.*,
23 141 F. Supp. 2d 1005, 1008 (N.D.Cal. 2001). Plaintiffs name
24 Dependable only in their First Cause of Action, which seeks a
25 declaration that a controversy exists regarding rights and
26 obligations under certain insurance policies (Complaint, ¶ 19).
27 However, the specific dispute is alleged to be "whether INSCORP
28 had and has a duty to defend and/or indemnify Dependable

1 against" the construction defect actions (*id.*) On its face,
2 this is not a dispute with Dependable; it is a dispute between
3 three insurance companies. The declaration that is being sought
4 is against INSCORP only. Nowhere is it alleged that Dependable
5 is disputing that INSCORP has a duty to defend and/or indemnify
6 Dependable. Of course any declaration by the Court of such a
7 duty would run against INSCORP alone, and in favor of
8 Dependable.

9 (b) Even if that were not the case, it is also
10 plain on the face of the Complaint that the parties are
11 misaligned. In determining issues of diversity, the Court "must
12 align for jurisdictional purposes those parties whose interests
13 coincide respecting the 'primary matter in dispute.'" *Prudential*
14 *Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867,
15 873 (9th Cir. 2000) (citation omitted). According to the
16 Complaint, Dependable sought coverage under its INSCORP policy,
17 which was denied (Complaint, ¶ 7). Plaintiffs in the removed
18 action also seek coverage for Dependable under the INSCORP
19 policy. Whether the INSCORP policy provides coverage for
20 Dependable for the construction defect cases is the "primary
21 matter in dispute" in the removed action and it is apparent that
22 Dependable's interests are aligned with those of Plaintiffs, not
23 with INSCORP on that question. For that reason the Court should
24 realign Dependable with Plaintiffs and, once that is done, there
25 is complete diversity of citizenship between all parties on the
26 plaintiff side and INSCORP on the defense side.

27 (c) Because Dependable is misaligned as a
28 defendant in this action, the requirement that all defendants

1 join in the removal of this action to federal court is not
2 applicable and this removal is effective without Dependable's
3 consent. *E.g., Polyplastics, Inc. v. Transconex, Inc.*, 713 F.2d
4 875, 877 (1st Cir. 1983).

5 5. INSCORP will comply with 28 U.S.C. § 1446(b) and
6 (d) by promptly serving written notice of the filing of this
7 Notice of Removal upon all parties and by filing such notice
8 with the Clerk of the Superior Court of the State of California
9 for the County of Contra Costa.

10
11 COTKIN & COLLINS
12 A PROFESSIONAL CORPORATION

13 By 
14 Robert G. Wilson

15 Dated: June 29, 2007

16
17 Attorneys for Defendant
18 Insurance Corporation of New York
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27
28

FILED
MAY 29 2007

K. TORRE CLARK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
BY **K. MITCHELL** Deputy Clerk

1 GEORGE D. YARON (State Bar #96246)
2 HENRY M. SU (State Bar #171353)
3 YARON & ASSOCIATES
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5 Attorneys for Plaintiffs
6 FAIRMONT SPECIALTY INSURANCE COMPANY and
TIG INSURANCE COMPANY

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF CONTRA COSTA

10
11 FAIRMONT SPECIALTY INSURANCE COMPANY, a Delaware corporation, and TIG
12 INSURANCE COMPANY, a California corporation,
13

14 Plaintiffs,

15 v.

16 INSURANCE CORPORATION OF NEW YORK, a New York corporation,
17 DEPENDABLE SHEET METAL, a California corporation, and DOES 1 through 10,

18 Defendants.

COMPLAINT FOR DECLARATORY
RELIEF AND EQUITABLE
CONTRIBUTION

BY FAX

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 06

SUMMONS ISSUED

20 COMES NOW Plaintiffs Fairmont Specialty Insurance Company and TIG Insurance
21 Company, and, by way of this Complaint against Defendants Insurance Corporation of New York,
22 Dependable Sheet Metal, and Does 1 through 10, hereby allege as follows:

23 THE PARTIES

24 1. Fairmont Specialty Insurance Company was formerly named Ranger Insurance
25 Company (hereinafter Fairmont will be identified as "Ranger"). At all relevant times herein, Ranger
26 is a corporation authorized to do business, and is doing business, under the laws of the State of
27 Delaware.

COMPLAINT

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EXHIBIT 1

2. TIG Insurance Company was formerly named Transamerica Insurance Company (hereinafter TIG will be identified as "Transamerica"). At all relevant times herein, Transamerica is a corporation authorized to do business, and is doing business, under the laws of the State of California.

3. At all relevant times herein, Insurance Corporation of New York ("Inscorp") was and is a corporation authorized to do business, and is doing business, under the laws of the State of New York.

4. At all relevant times herein, Dependable Sheet Metal ("Dependable") was and is a corporation authorized to do business, and is doing business, under the laws of the State of California.

5. The true names and capacities, whether individuals, corporations, partnerships, associations or otherwise, of Does 1 through 10 are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs will move to amend this Complaint to state their true names and capacities when the same have been ascertained.

GENERAL ALLEGATIONS

6. This action arises from underlying construction defect lawsuits, including but not limited to at least twelve (12) underlying construction defect lawsuits (the "Dependable actions") entitled:

a. *Gary Kaiser, et al. v. KB Homes, et al.*, Contra Costa County Superior Court case number C05-00991.

b. *Tannaz Abzarian, et al. v. Richland Development Corporation, et al.*, Contra Costa County Superior Court case number C05-00147.

c. *Lorna Belsky, et al. v. The Presley Companies, et al.*, Contra Costa County Superior Court case number C05-00837.

d. *Ron Capella, et al. v. Kaufman Broad of Northern California, et al.*, Alameda County Superior Court case number RG 06259608.

e. *Jeff Crawford, et al. v. Western Pacific Housing, et al.*, El Dorado County Superior Court case number PC 20050255.

1 f. *Charles Edwards, et al. v. Suncrest Homes, et al.*, Contra Costa County
2 Superior Court case number C05-00387.

3 g. *Kimberly Markham, et al. v. Kaufman Broad of Northern California, et al.*,
4 Contra Costa County Superior Court case number C06-01580.

5 h. *John Craig, et al. v. KB Homes, et al.*, Contra Costa County Superior Court
6 case number C06-02303.

7 i. *Beck, et al. v. Presley, et al.*, Alameda County Superior Court case number
8 H 213382-3.

9 j. *Kenneth James, et al. v. Dependable Sheet Metal, et al.*, Contra Costa County
10 Superior Court case number C04-00175.

11 k. *O'Neill, et al. v. Presley, et al.*, Alameda County Superior Court case number
12 H 214815-5.

13 l. *Thiara Rajendrapal, et al. v. William Lyon, et al.*, Alameda County Superior
14 Court case number HG 04167197.

15 7. Plaintiffs are informed and believe and thereon allege that Dependable was named
16 as a Defendant or Cross-Defendant in the *Dependable* actions. Dependable, either directly or
17 through others acting on its behalf, provided notice of the *Dependable* actions and tendered
18 Dependable's defense and indemnity to Inscorp, Ranger, and Transamerica.

19 8. Plaintiffs are informed and believe and thereon allege that Dependable was insured
20 under commercial general liability insurance policies (the "Dependable policies") issued by Inscorp,
21 Ranger, and Transamerica as follows:

22 a. Transamerica policy, number T7-35026957, effective from August 9, 1993,
23 to August 9, 1994.

24 b. Transamerica policy, number T7-35026957, effective from August 9, 1994,
25 to August 9, 1995.

26 c. Transamerica policy, number T7-35026957, effective from August 9, 1995,
27 to August 9, 1996.
28

d. Ranger policy, number GLO 673880 00, effective from August 9, 1996, to August 9, 1997.

e. Inscorp policy, number CAIC 10016984, effective from August 9, 1997, to December 1, 1998.

f. Inscorp policy, number CAIC 10016984, effective from December 1, 1998, to December 1, 1999.

g. Inscorp policy, number CAIC 10016984, effective from December 1, 1999, to December 1, 2000.

h. Inscorp policy, number CAIC 10016984, effective from December 1, 2000 to December 1, 2001.

9. Plaintiffs are informed and believe and thereon allege that Ranger and/or Transamerica provided a defense and/or indemnification for Dependable under each of the *Dependable* actions.

10. Plaintiffs are informed and believe and thereon allege that Inscorp improperly declined to provide a defense and/or indemnification for Dependable under each of the *Dependable* actions. Inscorp's declinations were based in whole or in part upon an Inscorp-drafted manuscript exclusionary endorsement that stated:

A. This insurance does not apply to the following, which is added to the EXCLUSIONS:

All "bodily injury," "property damage," "personal injury" or "advertising injury" that is continuous or progressively deteriorating, and that is first manifest prior to the effective date or after the expiration of this policy. This exclusion applies even if such injury or damage continues or deteriorates during the term of this policy.

C. Within the meaning of this endorsement, injury or damage is manifest when appreciable harm occurs that is or should be known to the insured, the person or organization harmed. (Emphasis added.)

1 11. Plaintiffs are informed and believe that, in each of the *Dependable* actions, the
2 underlying claimants alleged that defective construction and/or property damage were first
3 ~~discovered within three (3) years prior to the filing dates of the claimants' initial Complaint.~~

4 12. Plaintiffs are informed and believe that, in each of the *Dependable* actions, the
5 underlying claimants filed their initial Complaints more than three (3) years after the end of the last
6 Inscorp policy period on December 1, 2001.

7 13. Plaintiffs are informed and believe that, in each of the *Dependable* actions, Inscorp,
8 citing the policy provisions alleged in paragraph 10 above, declined Dependable's tender of defense.
9 Inscorp informed Dependable that the underlying claimants alleged "that the defects first manifest
10 within three years of the filing of the Complaint. . . . This was after the expiration of your INSCORP
11 policy and therefore not covered" or words to that effect.

12 14. Plaintiffs are informed and believe that, in each of the *Dependable* actions, Inscorp,
13 in reliance upon the policy provisions alleged in paragraph 10 above, declined Dependable's tender
14 of defense and failed to consider other possible manifestation times. According to the Inscorp
15 endorsement, harm could manifest when: (1) the insured knows of appreciable harm; (2) the insured
16 should have known of appreciable harm; (3) the claimant knows of appreciable harm; or (4) the
17 claimant should have known of appreciable harm. Inscorp solely focused upon when the claimant
18 alleged that it knew of appreciable harm and ignored at least three other possible times for
19 manifestations of damage as provided for in its own endorsement, manifestations that could easily
20 be within Inscorp's policy period.

21 15. Plaintiffs are informed and believe that, in each of the *Dependable* actions, Inscorp,
22 in reliance upon the policy provisions alleged in paragraph 10 above, declined Dependable's tender
23 of defense also in contravention of the holding in *Garriott Crop Dusting Co. v. Superior Court*
24 (1990) 221 Cal.App.3d 783, which provides that an insurer cannot rely on a claimant's allegation
25 regarding the statute of limitations as a coverage defense.

26 16. Plaintiffs are informed and believe that, in each of the *Dependable* actions, Inscorp,
27 in reliance upon the policy provisions alleged in paragraph 10 above, declined Dependable's tender
28

1 of defense in order to avoid being required to provide Dependable with independent counsel pursuant
 2 to Civil Code section 2860.

3 17. Plaintiffs are informed and believe that, in each of the *Dependable* actions, Inscorp,
 4 was a "recalcitrant" insurer, within the meaning of *Safeco Insurance Company v. Superior Court*
 5 (2006) 140 Cal.App.4th 874. Therefore, all of the damages alleged by the claimants in each of the
 6 *Dependable* actions are presumed to have occurred exclusively within Inscorp's policy period(s) and
 7 Inscorp's scope of coverage.

8 FIRST CAUSE OF ACTION

9 (Declaratory Relief Against All Defendants)

10 18. Plaintiffs incorporate by reference paragraphs 1 through 17 as though fully set forth
 11 herein.

12 19. An actual controversy has arisen and now exists between Plaintiffs, on the one hand,
 13 and Defendants, on the other hand, concerning their respective rights and obligations in the
 14 *Dependable* actions, including those under the *Dependable* policies. Plaintiffs allege that Inscorp
 15 had and has a duty to defend and/or indemnify *Dependable* against the *Dependable* actions under one
 16 or more of the general liability insurance policies issued by Inscorp, as alleged in paragraphs 8(e) to
 17 8(f) above.

18 SECOND CAUSE OF ACTION

19 (Equitable Contribution Against Inscorp)

20 20. Plaintiffs incorporate by reference paragraphs 1 through 17 as though fully set forth
 21 herein.

22 21. If Plaintiffs provided a defense and/or indemnification for *Dependable* under any of
 23 the *Dependable* actions, Plaintiffs are entitled to equitable contribution from Inscorp in an amount
 24 to be proved at trial.

25 PRAYER FOR RELIEF

26 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
 27 follows:
 28

- 1 1. For a judgment declaring the respective rights and obligations of Plaintiffs and
- 2 Defendants under the Dependable policies for the claims asserted in the *Dependable* actions;
- 3 2. For a judgment declaring that Inscorp had and has a duty to defend Dependable
- 4 against the *Dependable* actions under one or more of the general liability insurance policies issued
- 5 by Inscorp, as alleged in paragraphs 8(e) to 8(f) above;
- 6 3. For a judgment declaring that Inscorp had and has a duty to indemnify Dependable
- 7 against the *Dependable* actions under one or more of the general liability insurance policies issued
- 8 by Inscorp, as alleged in paragraphs 8(e) to 8(f) above;
- 9 4. For damages according to proof;
- 10 5. For an award of Plaintiffs' costs in this action; and
- 11 6. For other and further relief as the Court deems just and proper.

12
13 DATED: May 29, 2007

YARON & ASSOCIATES

14
15 By: _____

16 GEORGE D. YARON, ESQ.,
17 Attorneys for Plaintiffs
18 FAIRMONT SPECIALTY INSURANCE
19 COMPANY and TIG INSURANCE COMPANY
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COMPLAINT

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EXHIBIT 1

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:**(VISO AL DEMANDADO):**

INSURANCE CORPORATION OF NEW YORK, a New York corporation, DEPENDABLE SHEET METAL, a California corporation, and DOBS 1 through 10,

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

AIRMONT SPECIALTY INSURANCE COMPANY, a Delaware corporation, and TIG INSURANCE COMPANY, a California corporation,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

MAY 29 2007

K. MITCHELL

By: _____ Deputy Clerk

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

El nombre y dirección de la corte es:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA
25 COURT STREET
P.O. BOX 911
MARTINEZ, CA 94553

CASE NUMBER: 07 01170
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es:
JEBORGE D. YARON SBN(96246) HENRY M. SU SBN(171853) (415) 658-2929
YARON & ASSOCIATES
501 CALIFORNIA STREET, SUITE 2100
SAN FRANCISCO, CA 94108
K. MITCHELL

DATE:

MAY 29 2007

Clerk, by _____, Deputy
(Secretario) (Adjunto)

For proof of service of this summons, use Proof of Service of Summons (form POS-010).

Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): *Insurance company of New York*
at New York Corporation

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): GEORGE D. YARON (SBN 96246) HENRY M. SU (SBN 171853) YARON & ASSOCIATES 301 CALIFORNIA STREET, 21ST FLOOR SAN FRANCISCO, CA 94108 TELEPHONE NO: (415) 658-2929 FAX NO: (415) 658-2930 ATTORNEY FOR: FAIRMONT SPECIALTY INSURANCE COMPANY and		FOR COURT USE ONLY <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center;">MAY 29 2007</div>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA STREET ADDRESS: 725 COURT STREET MAILING ADDRESS: P.O. BOX 911 CITY AND ZIP CODE: MARTINEZ, CA 94553 BRANCH NAME:		CLERK OF THE COURT SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF CONTRA COSTA By: K. MITCHELL Deputy Clerk	
CASE NAME: FAIRMONT SPECIALTY INSURANCE CO. and TIG INSURANCE CO. v. INSURANCE CORPORATION OF NEW YORK		CASE NUMBER: 01170	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) Non-P/PI/D/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (06) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PI/D/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (35) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (08) <input checked="" type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Type of remedies sought (check all that apply):

- a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): DECLARATORY RELIEF AND EQUITABLE CONTRIBUTION

5. This case ☐ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 5/29/07

GEORGE D. YARON (SBN 96246)

(TYPE OR PRINT NAME)

SIGNATURE OF PARTY OR ATTORNEY FOR PARTY

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

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Form Adopted for Mandatory Use
Judicial Council of California
CM-010 (Rev. January 1, 2007)

CIVIL CASE COVER SHEET

Legal
Solutions
to PlusCal. Rules of Court, rules 3.220, 3.400-3.403;
Standards of Judicial Administration, § 19

BY FAX

EXHIBIT 1